.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 3 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

COMMISSIONER OF INCOME TAX

Versus

SARABHAI TECHNOLOGICAL DEVELOPMENT PVT.LTD.

Appearance:

Mr.Bharat J. Shelat, Advocate, instructed by
MR MANISH R BHATT, Advocate, for the appellant.
Messrs.D.A. Mehta, R.K. Patel, B.D. Karia, Advocates, for Mr.K.C. Patel, Advocate, for the respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 30/01/97

ORAL JUDGEMENT

At the request of Commissioner of Income Tax, following two questions of law said to be arising out of its appellate order in the case of assessee for the assessment year 1976-'77 in I.T.A. No.1861 of 1981 have been referred to us, along with the statement of the case, for the opinion of this Court :-

1. " Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs.30,457/incurred as entertainment expenses were allowable to the assessee u/s.37 of the I.T. Act, 1961?"

2. " Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to an allowance of Rs.34,245/- being the amount of expenditure incurred for rest house?"

Rs.30,457/- is claimed as deduction by the assessee in computation of its taxable income as expenditure that has been incurred for the provision of tea, coffee, lunch, etc., to the members of the staff and the visitors attending the offices at Bombay, Ahmedabad and Delhi. The claim has been disallowed by the Income Tax Officer by applying the provisions of Section 37(2A), by treating the same to be entertainment expenditure beyond the limit prescribed therein. The Tribunal, following the decision of the Gujarat High Court in C.I.T. v. Patel Brothers, 106 ITR 424, allowed the claim of the assessee, by holding that such expenses are not in the nature of entertainment expenditure. Though the decision of the Gujarat High Court in Patel Brothers' case which is related to assessment years prior to 1.4.1976, it has been affirmed by the Supreme Court in C.I.T. v. Patel Brothers, 215 ITR 165, it was also made clear by the Supreme Court that with effect from 1.4.1976, when Explanation 2 was added to Section 37(2A), giving extended meaning to term `expenditure', even the extension of customary hospitality or mess expenses would form part of entertainment expenditure with effect from the assessment year 1976-'77 in terms of the Explanation. As here we are concerned with the assessment year

1976-'77, the assessment shall now be governed by the amended provisions in terms of the Supreme Court decision. Accordingly, it must be held that the expenses incurred for the provision of tea, coffee, lunch, etc., to the visitors attending the offices at Bombay, Ahmedabad and Delhi amount to entertainment expenditure and must be dealt with in accordance with the provisions of Section 37(2A). However, the same cannot be said about the expenses incurred in relation to the employees and staff of the assessee as is clear from the language of the Explanation itself. The Explanation clearly reads that the entertainment expenditure "...does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or other place of their work...." We, therefore, hold that the provisions of tea, coffee, lunch, etc., to the extent they were incurred for the visitors attending the offices at Bombay, Ahmedabad and Delhi were eligible to deduction. However, to the extent they were referable to have been incurred in respect of staff, the same is eligible to deduction. Obviously, the actual apportionment shall have to be done by the Tribunal when it hears the appeal to give effect to the orders made in this Reference. Question No.1 is accordingly answered.

So far as question No.2 is concerned, it has been brought to our notice that in assessee's own case for the earlier assessment year in I.T. Reference No.284 of 1983, decided on 10th October, 1996, this Court has held the expenses to be allowable by following its earlier decision in CIT v. Ahmedabad Manufacturing and Calico Printing Company Limited, 197 ITR 538. Following the aforesaid decision in I.T.R. No.284 of 1983, decided on 10th October, 1996 in the assessee's own case, question No.2 is answered in the affirmative, against the Revenue and in favour of the assessee. Accordingly Reference shall stand disposed of.

******

(apj)